former rule is not only supported by the weight of authority, but is correct on principle. As the trustee has had the use of the money and has deprived the *cestui* of the benefit of it, it seems only fair to the latter to charge the trustee with interest. His good faith should make no difference in the result.

WATERS AND WATERCOURSES — NATURAL WATERCOURSES — RIPARIAN RIGHTS OF RAILWAY COMPANY TO ABSTRACT WATER FOR SUPPLYING LOCOMOTIVES. — A railway company, owning a narrow strip of land along a stream, laid a pipe between the stream and a tank from which they proposed to supply their locomotives with water. The defendant, who owned a mill situated lower down the stream, took up the pipe; whereupon the railway company sought an injunction against further interference by him. *Held*, that the injunction be refused, since the proposed user is unlawful, even though no material damage be caused thereby. *McCartney* v. *Londonderry, etc., Ry. Co.*, [1904] A. C. 301.

This is the third time that the question of a railway's right to take water from a stream for the use of its locomotives has been passed upon by an English court. In the first case, the use was forbidden because it impeded navigation. *Attorney-General* v. *Great Eastern Ry. Co.*, L. R. 6 Ch. App. 572. The second case, between a lower mill-owner and the railroad, was decided in favor of the latter. *Earl of Sandwich* v. *Great Northern Ry. Co.*, L. R. 10 Ch. D. 707. The present decision in the House of Lords overrules the last case, and definitely settles the point in England. The court proceeds upon the ground that as the water was to be used chiefly off the land its taking was unlawful *Cf. Swindon Waterworks Co.* v. *Wilts, etc., Navigation Co.*, L. R. 7 H. L. 697. Furthermore it is argued that while the mill-owner might suffer no material damage, nevertheless a right of his was being infringed which would in time give the railway company a right by prescription. Such infringement of a right is generally held actionable *Blodgett* v. *Stone*, 60 N. H. 167. The decision seems clearly sound and is in accord with the authorities in this country. *Clark* v. *Pennsylvania R. R. Co.*, 145 Pa. St. 438.

WATERS AND WATERCOURSES — SUBTERRANEAN AND PERCOLATING WATERS — RIGHT TO APPROPRIATE PERCOLATING WATERS. — *Held*, that a property owner may collect percolating waters for use off the land although he thereby drains a well on neighboring premises, the waters from which had been used only for domestic purposes. *Houston, etc., R. R. Co.* v. *East*, 81 S. W. Rep. 279 (Tex., Sup. Ct.).

This decision is in accord with the English rule. See 16 HARV. L. REV. 295; 17 *ibid.* 426.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

EXTRINSIC EVIDENCE IN AID OF INTERPRETATION. — This important and difficult subject is examined by Sidney L. Phipson in a recent article, *Extrinsic Evidence in Aid of Interpretation*, 20 L. Quar. Rev. 245 (July, 1904). The article is a clear discussion of Wigram's classic work and the many criticisms thereon, and offers independent ideas of value as well. Mr. Phipson stands by Wigram's treatment of interpretation as a question of evidence, thus taking issue with Professors Thayer and Wigmore. As to the object of interpretation — whether, as Wigram maintains, it is to ascertain the meaning of the words, or, as Hawkins and Thayer hold, to learn the intention of the writer — Mr. Phipson concludes that Hawkins's hypothesis is preferable. He finds the rejection of declarations of intention, when strictly considered, not really in conflict with Hawkins's contention. He thinks it not necessary, however, to adopt either theory in its more rigid form and approves Professor Graves's standpoint "that the object is to discover the meaning of the words as intended by the testator." Coming to the two opposing classifications and general rules as to the evidence receivable, Mr. Phipson again prefers Hawkins to Wigram. After elaborate

examination he says that "Wigram's distinction between 'explanatory evidence' and 'evidence of intention' cannot be supported, and that Mr. Hawkins and others are more correct in considering all extrinsic facts tendered in aid of interpretation to be, in effect, evidence of intention, circumstantial or direct. With regard, however, to the general rule of each writer, it is clear that since the admission of extrinsic evidence is determined by a variety of principles . . . it would be well-nigh impossible to devise any simple general rule . . . which could be made to do the work of all possible special ones." The author then points out that Wigram's explanatory evidence is not "always admissible," nor his evidence of intention "always inadmissible," and that Hawkins's view that circumstantial evidence of intention is invariably admissible cannot be sustained.

Mr. Phipson declares that in reducing the various rules and principles to seven working propositions, Wigram seems to have done all that is possible to secure condensation without sacrificing adequacy or exactness. Examining these propositions in detail, Mr. Phipson upholds the second, that primary meanings must if sensible inflexibly prevail, against Professor Thayer's doctrine that if relevant facts favor a secondary meaning that may be adopted. Proposition III is declared correct if properly read with the others, provided it means "the clear modern rule that after proof of an object or objects substantially though incorrectly answering the description, further evidence, *e. g.*, of treatment, dealing, and habits of speech, although not of course of direct declarations, is admissible to show that the testator in fact intended to refer to the object alleged." Except for the "now untenable proposition that 'no fact can be material which is not coincident in point of time with the making of the will,'" Proposition V is sustained. Though Proposition VII, as to equivocation, is not criticised, Hawkins's objection to Wigram's reasons for the admission of declarations of intention is considered strong, when he says that thus defining what is indefinite is making "a material addition to the will," and that it is only an historical anomaly that such evidence is not admissible generally. Mr. Justice Holmes's rejoinder in the HARVARD LAW REVIEW, Vol. XII. pp. 418, 419, is held not to meet these strictures satisfactorily. Subject to these modifications, Mr. Phipson finds in the Propositions the true value of Wigram's work, and declares they appear still to embody the most accurate and exhaustive statement of the law on the present topic.

A BRIEF HISTORY OF THE PAROL EVIDENCE RULE. — The interesting and valuable results of an original investigation into the sources and development of the rule by which the written memorandum of a transaction is declared to be conclusive as to its terms, is contained in a recent article by Professor Wigmore of the Northwestern University Law School. *A Brief History of the Parol Evidence Rule*, 4 Columbia L. Rev. 338 (May, 1904). The doctrine was unknown to the Germanic invaders of Rome and Western Europe. A general ignorance of letters and the existence of a "legal system of formal oral transactions" combined to strip the *carta*, or document of that period, of further value than as a means of effecting a formal symbolic delivery of land, and of preserving the names of witnesses upon whom alone reliance was placed for proof of the terms of the transaction. A notable advance in the status of written documents appeared with the rise of the seal. The principle that the king's word is indisputable gained for a document bearing his seal incontestability. As the use of the seal came to be extended to all persons, it carried with it the same attributes until, by the thirteenth century, the incontestability of sealed instruments was complete. Consequently the office of witnesses as vouchers for the terms of the original transaction receded into unimportance. But ignorance, coupled with the fact that all transactions affecting land were still practised with oral forms, prevented writings from becoming more than an alternative kind of proof. However, mercantile custom had already led the advance, and a tendency to become lettered had brought with